

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
The Pay Telephone Reclassification)	CC Docket No. 96-128
and Compensation Provisions of the)	
Telecommunications Act of 1996)	
)	
RBOC/GTE/SNET Payphone)	NSD File No. 99-34
Coalition Petition for Reconsideration)	

REPLY COMMENTS OF IDT CORPORATION

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REPLY COMMENTS OF IDT CORPORATION

IDT Corporation (“IDT”) by its attorneys, submits these Reply Comments in further response to the Petitions¹ for declaratory ruling, reconsideration and clarification on the Commission’s *Second Order*² issued in the above-captioned docket.

INTRODUCTION AND SUMMARY

In the *Second Order*, the Commission modified its payphone compensation rules in order to “better ensure that payphone service providers (PSPs) are fairly compensated for all completed, coinless calls made from ... payphones”³ and “to verify the accuracy of compensation [PSPs] receive[.]”⁴ No party submitting comments in this proceeding challenges this goal. However, every party submitting comments in this proceeding challenges the manner in which the Commission has chosen to realize this goal. Additionally, the rule modifications imposed by the Commission have lead certain

¹ Worldcom, Inc. Petition for Declaratory Ruling and Petition for Clarification (filed May 29, 2001)(“Worldcom Petition”), AT&T Petition for Clarification and/or Reconsideration (filed May 29, 2001)(“AT&T Petition”), and Global Crossing Petition for Reconsideration and Clarification (filed May 29, 2001)(“Global Crossing Petition”)

² *Second Order on Reconsideration, In the Matter of The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128; *RBOC/GTE/SNET Payphone Coalition Petition for Clarification*, NSD File No. L-99-34; FCC 01-109 (March 28, 2001)(“*Second Order*”).

³ *Id.* at ¶ 1.

⁴ *Id.* at ¶ 11.

facilities-based carriers to propose radical changes to the Commission's per-call compensation regime in order to comply with the Commission's modified rules. These radical changes are vociferously opposed by IDT and its fellow members of the switch-based reseller ("SBR") community.

In order to accomplish its goals as set forth in the *Second Order*, the Commission needs to, at a minimum, halt the implementation of its modified rules and work with all interested parties – PSPs, toll-free origination service providers and SBRs – to devise rules that are lawful, technologically possible, competitively neutral, financially practical and purposeful. Of all the parties submitting comments in this proceeding, only IDT has provided a foundation for new rule modifications that meets the aforementioned objectives. As set forth in our Initial Comments,⁵ IDT has proposes that the Commission: (1) permit SBRs to assume full responsibility and liability for per-call tracking reporting and compensation; (2) require facilities-based carriers to identify to PSPs the responsible SBR; (3) clarify the SBR's responsibility to remit per-call compensation for all calls sent to its switch and subsequently answered by the called party; (4) indemnify facilities-based carriers where a SBR has assumed responsibility for its calls; (5) provide greater assistance to PSPs where a SBR fails to meet its obligations; and (6) impose limited reporting requirements upon facilities-based carriers to assist PSPs in verifying the accuracy of compensation it receives. IDT urges the Commission to recognize that neither its modified rules nor the modifications proposed by Worldcom, AT&T, Global Crossing, APCC will lead to a workable compensation regime, and use IDT's proposals as the foundation for a lawful, technologically possible, competitively neutral, financially practical and purposeful, per-call compensation regime.

ARGUMENT

I. THE COMMISSION SHOULD DENY WORLDCOM'S PROPOSED CHANGE OF THE DEFINITION OF A COMPLETED CALL.

In its Petition, Worldcom proposed that the Commission change its definition of a completed call from “a call answered by the called party”⁶ to “one that is either completed on the underlying carrier’s network, or one that is handed off to its SBR customers that do not have prior agreements with all [PSPs] to pay dial around compensation.”⁷ For the reasons stated in our Initial Comments⁸ and below, IDT requests that the Commission deny this proposal. The majority of parties commenting on this proposal similarly request that the Commission deny Worldcom’s proposal. Additionally, ASCENT correctly argues that Worldcom’s request is untimely. Also, the supplemental Comments filed by Worldcom present no new arguments and fail to address the legal infirmities of the company’s Petition. APCC similarly fails to present a legal basis upon which the proposed change can be approved. Furthermore, the Commission should not approve a compromised version of Worldcom’s proposed definition, as recommended by Flying J, or permit its application in certain cases, as suggested by AT&T.

⁵ “Initial Comments of IDT Corporation,” (filed October 9, 2001) at pp. 19-21 (“IDT Initial Comments”).

⁶ *Report and Order, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket 96-128, 11 FCC Rcd 20541 (1996) at ¶ 63 (“*Report and Order*”).

⁷ Worldcom Petition at p. 1.

⁸ IDT Initial Comments at pp. 23-30.

A. Commenters Overwhelmingly Oppose Worldcom's Proposed Change.

There is near-uniform opposition to Worldcom's revised definition of a completed call.⁹ The Commenters generally present the same arguments set forth by IDT in its Initial Comments – that the revised definition violates 47 USC §§ 201(b), 202(a) and 276, and if implemented, will harm SBRs, their customers and competition in the coinless calling marketplace. As such, there is no need to restate those arguments. Instead, IDT simply takes this opportunity to express its solidarity with its fellow commenters on this issue.

B. Worldcom's Petition Should Be Denied As Untimely.

IDT supports ASCENT's argument that the Commission is prohibited under 5 USC § 553 of the Administrative Procedure Act from redefining a "completed call" in this proceeding.¹⁰ IDT agrees that "The definition of 'completed calls' of which AT&T and WorldCom complain was adopted in the initial *Report and Order* in this

⁹ See, "Opposition of CommuniGroup of K.C., CommuniGroup of Jackson, Inc., NTS Communications, Inc., Transtel Communications, Inc., Tel America of Salt Lake City, Inc., National Network Corporation and Extelcom d/b/a Express Tel, to Petitions for Reconsideration, Clarification, and Declaratory Ruling," October 9, 2001 ("CommuniGroup Comments") at pp. 1-4.; "Comments of Telstar International, Inc. on Petitions for Reconsideration and/or Clarification," October 9, 2001 ("Telstar Comments") at pp. 3-17; "Comments of the Ad Hoc Resellers Coalition," October 9, 2001 ("ARC Comments") at pp. 4-5; "Qwest Communications International, Inc. Comments," October 9, 2001 ("Qwest Comments") at pp. 6-7; "CenturyTel Long Distance Comments to Petitions for Reconsideration and Clarification," October 9, 2001 ("CenturyTel") at pp. 2-4; "Comments of the Internaional Prepaid Communications Association on Petitions for Reconsideration and/or Clarification," October 9, 2001 ("IPCA Comments") at pp. 7-9; "Comments of Network Enhanced Telecom, LLP d/b/a Network IP," October 9, 2001 ("NET Comments") at pp. 6-8; "Comments of VarTec Telecom, Inc. to Petitions for Declaratory Ruling, Reconsideration and/or Clarification of the Payphone Compensation Second Order on Reconsideration," October 9, 2001 ("VarTec Comments") at pp. 4-5; "Comments of Intellicall Operator Services, Inc.," October 9, 2001 ("ILD Comments") at pp. 1-8; "Comments of the RBOC Payphone Coalition on Petitions for Reconsideration and Clarification," October 9, 2001 ("RBOC Payphone Coalition Comments") at p. 6; ASCENT at pp. 6-13; "Opposition of One Call Communications, Inc. to Petitions for Reconsideration and Petition for Declaratory Ruling," October 9, 2001 ("One Call Comments") at pp. 4-6; and "Comments of Flying J," October 9, 2001 ("Flying J Comments") at pp. 3-6.

¹⁰ See, "Comments of the Association of Communications Enterprises," October 9, 2001 ("ASCENT Comments") at pp. 2-6.

proceeding[.]”¹¹ “the Commission [did not] revisit this matter in the *Second Report and Order* or the *Third Report and Order* issued in this proceeding[.]”¹² and that “the Commission’s definition of a ‘completed call’ within the context of its payphone compensation regime became final five years ago.”¹³ As a result, IDT concurs with ASCENT that “The requests of AT&T and WorldCom that the Commission reconsider its definition of ‘completed calls,’ accordingly, must be dismissed as filed grossly out of time.”¹⁴

C. Worldcom Presents No New Arguments In Support of Its Petition.

Despite the opportunity to address the inadequacies of its Petition, Worldcom fails to provide any legal support for its proposed change. Instead, it regurgitates its previous arguments, namely that the massive, SBR-destroying change proposed is necessary to create the “most administratively efficient method of payphone compensation.”¹⁵ IDT continues to assert that the numerous violations of the Commission’s rules caused by this change prevent the requested modification.¹⁶ Moreover, IDT asserts that if there is truly little or no alternative to alleviate the allegedly massive administrative burdens of the Commission’s modified tracking, reporting and compensation obligations than to change the definition of a completed call, then this is cause for a revision or elimination of the modified obligations, rather than a change in the definition of a completed call.

¹¹ *Id.* at p. 4.

¹² *Id.* at p. 5 (Footnote omitted).

¹³ *Id.* at p. 5.

¹⁴ *Id.*

¹⁵ “Comments of Worldcom, Inc. Petitions for Declaratory Ruling and/or Clarification of the Payphone Compensation Second Order on Reconsideration,” October 9, 2001 (“Worldcom Comments”) at pp. 6-7.

¹⁶ *See*, IDT Initial Comments at pp. 23-30.

D. APCC Fails To Present a Legal Basis Upon Which the Commission Can Grant Worldcom's Petition.

APCC's support for Worldcom's proposed change demonstrates that if self-interest were an Olympic sport, APCC would surely win the gold medal. While the arguments APCC presents may be laughable, APCC's past success in convincing the Commission to act contrary to the interests of SBRs compels IDT to take their arguments seriously and respond accordingly.

First, APCC states that "allowing carriers to treat calls completed to resellers as compensable will permit a substantially simplified compensation system, with reduced carrier costs and a more accurate count of compensable calls."¹⁷ It is difficult to respond to such exquisite illogic – that the only way to track, report and compensate PSPs for completed calls is to change the definition of a compensable call so radically as to defy Congressional intent in requiring per-call compensation. In spite of this difficulty, IDT is compelled to assert that the goals of the Commission in the *Second Order* – "to better ensure that [PSPs] are fairly compensated for all completed, coinless calls made from payphones"¹⁸ and "to verify the accuracy of compensation [PSPs] receive"¹⁹ – are not furthered by Worldcom's proposal, as the proposal would compensate PSPs for far more than "calls answered by the called party" and makes no effort to verify the accuracy of compensation PSPs receive.

¹⁷ "Comments of the American Public Communications Council on Petitions for Reconsideration/Clarification," October 9, 2001 ("APCC Comments") at p. 2.

¹⁸ *Second Order* at ¶ 1.

¹⁹ *Id.* at ¶ 11.

APCC also states that Worldcom's approach offers "flexibility"²⁰ within "reasonable parameters,"²¹ and that the Commission shouldn't interfere with the facilities-based carriers' "market decisions."²² IDT asserts that it is not reasonable when "flexibility" results in radically different compensation obligations based on whether a provider offers service through its own facilities or through switch-based resale.²³ Moreover, IDT finds it ironic that APCC praises facilities-based carriers' right to make "market decisions" while the very same APCC has spent the last five years petitioning the Commission to constrain these same carriers' "market decisions" regarding per-call compensation. Clearly, APCC supports market freedom only when it results in a windfall for PSPs. IDT wholeheartedly supports total market freedom where it promotes competition and the public interest. However, when market freedom eliminates competition and harms consumers, IDT asserts that the Commission must step in and act in the public interest.

Finally, APCC notes that "If the approach is not cost-effective for IXC's customers, it is likely that another IXC will offer a different approach."²⁴ However, as has been demonstrated in IDT's Initial Comments,²⁵ more than 84% of the domestic toll-free origination service provider market has effectively adopted Worldcom's approach to charge their SBR customers for all calls sent to its switch, leaving SBRs little opportunity to find another provider that "offers a different approach." Therefore, APCC's market-based approach is not based on market reality, and must be rejected.

²⁰ APCC Comments at p. 2.

²¹ *Id.* at p. 2.

²² *Id.* at p. 2.

²³ *See*, IDT Initial Comments at pp. 25-28.

²⁴ APCC Comments at p. 2.

²⁵ IDT Initial Comments p. 46, n. 103.

E. The Commission Should Not Compromise and Treat All Calls Sent to a Platform As “Completed” For the Purpose of Per-call Compensation.

While Flying J opposes Worldcom’s proposal because it presents a “double standard, inequity and [an] anticompetitive effect,”²⁶ the company unwisely proposes a compromise that “the Commission should redefine a completed call to include all calls completed to a platform, whether the platform belongs to the IXC itself or to its SBR.”²⁷ IDT urges the Commission to reject this suggestion because, even though it eliminates some of the more discriminatory aspects of the Worldcom proposal, it: (1) is inconsistent with the Commission’s interpretation of a completed call; (2) would still result in unjust and unreasonable charges to SBRs; and (3) would unjustly reward PSPs through per-call compensation for calls not answered by the called party.

F. Worldcom’s Proposed Change Can Not Be Permitted In Any Situation.

AT&T supports Worldcom’s proposed change “at least in cases where the SBR does not have its own systems for tracking completed calls or where the SBR decides that the costs of maintaining such systems are greater than any cost savings likely to result from such tracking.”²⁸ It is IDT’s position that Worldcom’s proposed change is never permissible, although we concur with AT&T that a SBR has the right to track its completed calls to assist facilities-based carriers in meeting their compensation obligations.²⁹ In spite of this concurrence, IDT is concerned that AT&T’s position is simply a smoke-screen whereby facilities-based carriers will impose surcharges at so

²⁶ Flying J Comments at p. 6.

²⁷ *Id.* at p. 6.

²⁸ “AT&T Comments on Petitions for Declaratory Ruling, Reconsideration and/or Clarification,” October 9, 2001 (“AT&T Comments”) at p. 2.

²⁹ *Id.* at pp. 2-3.

high a rate as to make it less costly for SBRs to simply remit for all calls, rather than all completed calls. For this reason, we urge the Commission to act on our request to initiate a proceeding to determine recoverable costs associated with a facilities-based carriers' tracking and reporting obligations.³⁰

³⁰ *See*, IDT Initial Comments at pp. 48-50.

II. THE COMMISSION SHOULD DENY AT&T'S REQUEST FOR CLARIFICATION.

In its Petition, AT&T requested clarification that its practice of “pay[ing] payphone compensation at the Commission-established rate for all calls that complete to a switch-based reseller’s switching platform, whether or not such calls are completed to the called party”³¹ is “consistent with the Commission’s new requirements and that if AT&T continues this practice it need not take additional steps to track calls routed to resellers.”³² For the reasons stated in our Initial Comments³³ and below, IDT requests that the Commission deny AT&T’s Petition. AT&T’s Petition is opposed by many of the Commenters. While the RBOC Payphone Coalition supports AT&T’s Petition, this support is conditioned upon protecting SBRs from charges for non-completed calls. Additionally, IDT asserts that the basis upon which Bulletins supports AT&T’s Petition is unsupported in the record and/or is irrelevant to this proceeding.

A. AT&T’s Request Is Opposed by Many of the Commenters.

Suffering the same infirmities as the Worldcom Proposal, AT&T’s Request clarification is similarly opposed by many of the Commenters.³⁴ CenturyTel states, “The discriminatory affect of AT&T[‘s] proposal[] is clear.”³⁵ One Call states that “if AT&T’s ... petition is granted, PSPs will lend up receiving three to five times as much per-call compensation for calls routed to One Call or other resellers as would be justified by the actual completed calling volume under the payphone compensation rules set forth in the

³¹ AT&T Petition at pp. 2-3 (Footnote omitted).

³² *Id.* at p. 3.

³³ IDT Initial Comments at pp. 31-40.

³⁴ *See*, CenturyTel Comments at pp. 2-4; ILD Comments at pp. 3-5; IPCA Comments at p. 5; and One Call Comments at pp. 4-6.

³⁵ CenturyTel Comments at p. 3.

Payphone Orders.³⁶ Additionally, as noted *supra*, ASCENT asserts that AT&T's Petition was filed "grossly out of time" and thereby violates 5 USC § 553 of the Administrative Procedure Act.³⁷

B. The RBOC Payphone Coalition's Support Is Conditioned Upon Protecting SBRs From Unreasonable Charges.

The RBOC Payphone Coalition supports AT&T's Request on the condition that "the Commission ... also make clear that by granting AT&T's petition, the Commission does not automatically impose an obligation on resellers to reimburse an IXC for any over-inclusion of calls in the IXC's compensation payments to PSPs."³⁸ This position seems to be echoed by AT&T in its own Comments.³⁹ IDT agrees that SBRs cannot be required to remit per-call compensation for calls that are not answered by the called party, but we are concerned that if AT&T's clarification is granted, AT&T and other facilities-based carriers will simply use the threat of extortionate tracking costs to "persuade" SBRs to simply pay for all calls sent to the switch, rather than only for calls answered by the called party. For this reason, IDT reiterates its request that the Commission initiate a proceeding to determine appropriate costs for tracking calls and prevent recovery until such a proceeding has concluded.⁴⁰

³⁶ One Call Comments at p. 4 (Footnote omitted).

³⁷ See, ASCENT Comments at pp. 2-6.

³⁸ RBOC Payphone Coalition Comments at p. 5.

³⁹ See, AT&T Comments at pp. 2-3.

⁴⁰ See, IDT Initial Comments at pp. 48-50.

C. The Underlying Basis for Bulletin's Support for AT&T's Request is Not Found in the Record and/or is Irrelevant to this Proceeding.

Bulletins supports AT&T's Petition under the premise that calling card users' chain dialing and prepaid calling card providers alleged practice of imposing charges for non-answered calls "cancels out" any excessive per-call completion charges under AT&T's Petition.⁴¹ Bulletins' position is baseless and absurd. While calling card providers have demonstrated that call completion rates range from a high of 70% for domestic calls to as low as 15% for international calls, Bulletins has provided no evidence whatsoever that "chain dialed" calls with more than one call answered by the called party within the chain offset the millions of non-completed calls that would require compensation under AT&T's Petition. Additionally, Bulletins presents no evidence whatsoever that calling card providers charge their customers for non-completed calls. Moreover, it is probably impossible for Bulletins to do so, as this is not industry practice for SBR or facilities-based providers of calling card services. Even if Bulletins did present such evidence, however, it would be irrelevant, because AT&T's Petition is about whether the company's actions are consistent with the Commission's interpretation of 47 USC §276, not whether SBRs charge their customers for non-completed calls.

⁴¹ See, "Comments of Bulletins," October 9, 2001 ("Bulletins Comments") at pp. 4-6.

III. THE COMMISSION SHOULD DENY GLOBAL CROSSING'S REQUEST FOR TIMING SURROGATES.

In its Petition, Global Crossing requests that the Commission adopt its proposal that “[c]alls would be considered completed if the carrier time field at the originating switch is over 25 seconds, except for 950-calls that would not be considered completed until 45 seconds have elapsed.”⁴² For the reasons stated in its Initial Comments⁴³ and below, IDT requests that the Commission deny Global Crossing’s Petition. Comments filed in response to the Petition reveal near uniform opposition to timing surrogates. Furthermore, IDT asserts that modifying the length of timing surrogates will not cure the inherent legal infirmities of timing surrogates.

A. There Is Near Uniform Opposition to Timing Surrogates.

There is near-uniform support for IDT’s position that the Commission deny Global Crossing’s request for timing surrogates.⁴⁴ Telstar states, “[U]se of a timing surrogate is unnecessary. Answer supervision is the industry standard for determining when calls are completed and there is no reason to change this standard.”⁴⁵ IPCA notes that “It is difficult if not impossible to fashion timing surrogates that reliably account for differences among networks and carriers.”⁴⁶ AT&T states an equally compelling reason: “[M]any (if not most) carriers’ payphone tracking systems, including AT&T’s, do not

⁴² Global Crossing Petition at pp. 7-8 (Footnoted omitted). In its Comments, Global Crossing recommends a timing surrogate of one minute for international calls, although, as is customary for Global Crossing, no explanation is provided to support this significant change in policy.

⁴³ IDT Initial Comments at pp. 41-50.

⁴⁴ See, Telstar Comments at p. 18; Ad Hoc Resellers Comments at p. 5; IPCA Comments at pp. 11-12; NET Comments at pp. 5-6; ILD Comments at pp. 5-6; RBOC Payphone Coalition Comments at p. 8; ASCENT Comments at pp. 13-15 (Unlike the other Commenters, ASCENT’s opposition is based on procedural grounds, rather than substantive grounds. While IDT does not concur with ASCENT’s support for timing surrogates, we agree that the Commission could not adopt Global Crossing’s call-timing surrogate without the benefit of notice and comment rulemaking.); Flying J Comments at pp. 7-9; Bulletins Comments at p. 7; AT&T Comments at pp. 1; and One Call Comments at pp. 5-6.

⁴⁵ Telstar Comments at p. 18.

⁴⁶ IPCA Comments at p. 12.

have mechanisms that would allow them to treat as compensable calls that are “off hook” for any designated period.”⁴⁷

B. Modifying the Length of a Timing Surrogate Does Not Cure The Inherent Legal Infirmities of Timing Surrogates.

Qwest supports Global Crossing’s Petition to implement timing surrogates, but recommends a threshold of 40 seconds for payphone calls.⁴⁸ In doing so, Qwest notes that the implementation of timing surrogates would: (1) “minimize disputes between PSPs and carriers on the volume of calls completed by SBRs;”⁴⁹ (2) “relieve SBRs of the burden of tracking and reporting completed calls to the first facilities-based IXC;”⁵⁰ (3) “minimize disputes between IXCs and SBRs on per call compensation arrangements and the volumes of calls completed by SBRs.”⁵¹ Qwest also states that “If SBRs produce credible evidence that the timing surrogates are not an accurate reflection of the overall volume of calls completed by SBRs, as a group, the Commission should revise these timing surrogates.”⁵²

IDT opposes Qwest’s Comments for the same reason we oppose Global Crossing’s: timing surrogates in general violate the Commission’s interpretation of 47 USC § 276 and implementation of the particular timing surrogate would violate 47 USC § 706(2)(B). Moreover, we disagree with the specific arguments made by Qwest in support of timing surrogates. First, there is no basis to determine that the implementation of timing surrogates would minimize disputes with PSPs. Under the Commission’s previous rules, there was no ambiguity as to when a call was compensable, yet there were

⁴⁷ AT&T Comments at p. 1.

⁴⁸ Qwest Comments at p. 5.

⁴⁹ *Id.* at p. 4.

⁵⁰ *Id.*

⁵¹ *Id.* (Footnotes omitted).

⁵² *Id.* at p. 5.

still disputes. Simply adopting a new definition of a compensable call will not change this fact. Second, there is no basis to determine that the implementation of timing surrogates would relieve SBRs of any tracking and reporting obligations. In fact, it could lead to greater difficulty, as carriers which previously tracked calls based on answer supervision will now need to track calls based solely on the timing surrogate, a feat that may not be technologically possible. Third, there is no basis to determine that the implementation of timing surrogates will minimize disputes between facilities-based carriers, SBRs and PSPs. If the Commission permits SBRs to track or assist facilities-based carriers in tracking completed calls and prevents facilities-based carriers from taking advantage of their new role in the compensation process, there will be no need to prevent a significant increase in disputes.

Finally, IDT opposes Qwest's suggestion that 40 seconds is an accurate reflection of when a call is completed. Several SBRs have stated that this figure is by no means an accurate reflection of the time needed to determine whether a call is or will be answered by the called party.⁵³ IDT urges the Commission that if it chooses to consider timing surrogates in this or a future proceeding, it not set 25 seconds, 40 seconds or any particular length as a rebuttable presumption. Any surrogate set should be based on evidence presented to the Commission.⁵⁴ Moreover, if, after a proceeding, the Commission sets timing surrogates, it should still permit individual SBRs to petition the Commission and present evidence that the Commission-approved timing surrogate does

⁵³ See, IDT Initial Comments at p. 44; IPCA Comments at p. 12; ILD Comments at p. 5; and Flying J Comments at p. 9.

⁵⁴ ASCENT, which recommends that the Commission consider timing surrogates in separate proceeding, recommends a surrogate of "between 45 and 60 seconds." ASCENT Comments at p. 15, n. 43. These varied surrogates – from Global Crossing's 25 seconds to ASCENT's 60 seconds reveal how arbitrary and unsupported these figures are.

not reflect the actual time for a call to be answered by the called party for the Petitioner,
and grant an appropriate company-specific surrogate.

IV. THE COMMISSION SHOULD DENY GLOBAL CROSSING'S REQUEST TO LIMIT SBRs' ABILITY TO CONTRACT.

In its Petition, Global Crossing requests that the Commission “limit the ability of carriers to negotiate private contractual arrangements with PSPs only for those calls for which they have the compensation obligation.”⁵⁵ For the reasons stated in its Initial Comments⁵⁶ and below, the Commission should deny Global Crossing's Petition. IDT is supported by several Commenters who equally oppose this request. IDT also opposes the sort of notice and indemnification obligations proposed by Worldcom, as they effectively prevent SBRs from entering into contractual arrangements with any PSPs.

A. Commenters Strongly Oppose Limiting SBRs Ability to Contract.

Many Commenters reject Global Crossing's request to limit SBRs ability to contract directly with PSPs.⁵⁷ The RBOC Payphone Coalition states, “There is no justification for preventing certain carriers from adopting private arrangements to take the place of the regulatory obligations imposed by the Commission, so long as all parties' legitimate interests are taken into account.”⁵⁸ One Call notes that, “One Call has been compensating numerous PSPs for years under contract, and Global Crossing has presented no reason to believe that such arrangements now require policing by IXC.”⁵⁹

⁵⁵ Global Crossing Petition at p. 10.

⁵⁶ IDT Initial Comments at pp. 44-47.

⁵⁷ NET Comments at pp. 8-9; RBOC Payphone Coalition Comments at p. 8; Bulletins Comments at p. 8; and One Call Comments at pp. 6-7.

⁵⁸ RBOC Payphone Coalition Comments at pp. 8-9.

⁵⁹ One Call Comments at p. 7.

B. Worldcom Seeks to Effectively Prevent SBRs from Entering Into Contracts With PSPs.

The Commission should deny Worldcom's request to "manage its risk,"⁶⁰ as this is simply an attempt to limit SBRs ability to enter into contracts with PSPs. While IDT agrees that any agreement between an SBR and a PSP should be made known to the facilities-based carrier and should indemnify the carrier for compensation-specific issues, we vehemently oppose granting facilities-based carriers any ability to condition the terms under which an SBR reaches an agreement with a PSP. The most onerous condition made by Worldcom is its provision of a list containing PSPs, *all* of which must assent to an agreement with the SBR before Worldcom will permit its SBR customer to enter into *any* direct agreements with PSPs. This is absurd, as it presents a first step beyond which an SBR can never reach, as several of the PSPs on the list, such as APCC, have demonstrated their utter and complete disinterest to enter into direct agreements with SBRs. Moreover, it is fundamentally unfair to require 10 non-related parties' consent for an SBR to contract with an individual PSP. The Commission should affirmatively state that facilities-based carriers do not have the authority to prevent SBR customers from entering into agreements with PSPs. Moreover, the Commission should state that PSPs must accept per-call compensation from SBRs that agree to meet their tracking, reporting and compensation obligations, as finally determined by the Commission. Ultimately, since Worldcom's request will effectively prevent SBRs from entering into agreements with PSPs, the Commission should deny this request.

⁶⁰ Worldcom Comments at pp. 8-11.

V. THE COMMISSION SHOULD REDUCE AND REVISE ITS EXCESSIVE TRACKING AND REPORTING REQUIREMENTS.

In its *Second Order*, the Commission concluded:

[T]he facilities-based carrier must send back to each PSP a statement including the toll-free and access code numbers for calls that the LEC routed to the carrier and the volume of calls each toll-free and access code number that each carrier has received from each of that PSP's payphones.⁶¹

In their Petitions, Worldcom, AT&T and Global Crossing all opposed the increased tracking and reporting obligations, generally citing the technical inability to track and report the requested information⁶² For the reasons stated in its Initial Comments⁶³ and below, IDT requests that the Commission, at a minimum, reduce and revise its excessive tracking and reporting requirements. Many of the Commenters oppose the Commission's excessive tracking and reporting requirements. Moreover, based on the comments provided, it is unclear whether the facilities-based carriers are capable of providing the tracking required. It is far more certain, however, that SBRs are capable and willing to continue tracking their completed calls. IDT asserts that SBRs should be permitted to track their completed calls and report and remit compensation for those calls directly to PSPs or through neutral third-party clearinghouses. IDT also urges the Commission to reject the modified tracking and reporting requirements proposed by the APCC and supported by Worldcom and AT&T, as this proposal would *de facto* change the definition of a "completed call" only for SBRs and would create disproportionate and excessive reporting requirements for SBRs.

⁶¹ *Second Order* at ¶18.

⁶² *See*, Worldcom Petition at pp. 5-6 and AT&T Petition at pp. 4-6.

⁶³ IDT Initial Comments at pp. 10-22.

A. Many of the Commenters Oppose The Commission's Excessive Tracking and Reporting Requirements.

Several Commenters oppose the Commission's excessive tracking and reporting requirements.⁶⁴ Qwest states that, "The Commission should eliminate all reporting requirements that pertain to uncompleted noncompensable calls that originate from payphones."⁶⁵ Worldcom states, "The Commission should also take this opportunity to clarify that carriers are required to report compensable calls, rather than all calls routed to carriers."⁶⁶ IDT concurs with these positions.

B. Facilities-based Carriers May Not Be Able To Track Completed Calls.

The facilities-based providers maintain that they, and other facilities-based carriers, cannot track calls as anticipated under the *Second Order*.⁶⁷ Several commenters challenge the claim by facilities-based carriers that they cannot track calls sent to an SBR or that tracking these calls is a difficult, expensive proposition. For example, CommuniGroup states, "facilities-based IXC's should in most cases be able to determine themselves whether calls from payphones complete to the called party."⁶⁸ NET states that "given the right level of cooperation from FB-IXCs, NET could in short order implement systems that will enable FB-IXCs to determine precisely which calls originated from payphones are completed and which are not."⁶⁹ VarTec states that "In most cases, if not all, SS7 signaling and older technologies make it possible for the originating IXC's to determine whether a call is completed to the called party even when

⁶⁴ See, Qwest Comments at pp. 7-8; VarTec Comments at p. 5; ASCENT at pp. 15-17.

⁶⁵ Qwest Comments at pp. 7-8.

⁶⁶ Worldcom Comments at p. 13.

⁶⁷ See, Worldcom Comments at pp. 2-6 and AT&T Comments at p. 2.

⁶⁸ CommuniGroup Comments at p. 7.

⁶⁹ NET Comments at p. 4.

routed to a switch-based reseller.”⁷⁰ Ultimately, it is unclear whether facilities-based carriers can track the completed calls of SBR customers, although it is clear that they are unwilling to do so.

C. SBRs Are Able and Willing To Track and Report Completed Calls.

While there is considerable dispute over whether facilities-based carriers have the ability to track calls sent to SBRs, the SBR Commenters in this proceeding have made it clear that they are able and willing to track and report calls answered by the called party.⁷¹ The Ad Hoc Resellers Coalition states, “ARC members are able and willing to report call completion to the underlying carriers, or, where contractual arrangements are made directly with PSPs, certify that fact to underlying carriers, thereby relieving them of compensation obligations with respect to those calls.”⁷² Flying J states, “SBRs have the ability to identify and record call detail information on completed payphone calls, since their ability to bill for such calls depends on that information.” Since SBRs are able and willing to track and report calls, and facilities-based carriers are either unable or unwilling to report completed calls, IDT asserts that the Commission has no real option other than to permit SBRs to track and report their completed calls, either to their facilities-based provider to the PSP directly or through a third-party clearinghouse.

⁷⁰ VarTec Comments at p. 3.

⁷¹ See, Telstar Comments at p. 22; Ad Hoc Resellers Comments at p. 3; CenturyTel Comments at pp. 5-6; Flying J Comments at p. 10.

⁷² Ad Hoc Resellers Comments at p. 3

D. The Commission Should Grant SBRs Greater Authority to Track, Report and Compensate PSPs Directly or Through Third Party Clearinghouses.

IDT supports the many Commenters that urge the Commission to permit SBRs to continue using third-party clearinghouses to compensate PSPs.⁷³ Several SBRs have brought to the Commission's attention how facilities-based carriers, as PSPs and as competitors in the coinless calling market, are competitors of SBRs and through their actions, have demonstrated that they can not be expected to act in a competitively neutral manner toward SBRs. PSPs have provided similar evidence of difficulty in working with facilities-based carriers. As noted by APCC, facilities-based carriers have exhibited "self-interested judgment"⁷⁴ and have been involved in "a long running dispute with several IXCs"⁷⁵ which required Commission intervention.⁷⁶ On the other hand, no Commenter has questioned the neutrality of third-party clearinghouses or their ability to secure payment for PSPs. IDT asserts that the Commission grant SBRs the option, at their sole discretion, to use a neutral third-party clearinghouse for the remittance of per-call compensation.

E. Tracking and Reporting Proposals Recommended By "The Coalition" Violate the Commission's Rules and Discriminate Against SBRs.

APCC, along with the Regional Bell Operating Companies, Worldcom and AT&T have proposed rule modifications to harmonize the facilities-based carriers' disinterest in implementing new tracking requirements and remitting additional per-call compensation with the PSPs' interest in receiving a windfall of compensation for non-

⁷³ See, Telstar Comments at p. 20; CenturyTel Comments at pp. 5-6; IPCA Comments at pp. 9-10; and Ad Hoc Resellers Comments at p. 6.

⁷⁴ APCC Comments at p. 5.

⁷⁵ *Id.* at p. 4, n. 5.

completed calls. As APCC states, “The parties have reached consensus on principles that reasonably balance the concerns of both sides.”⁷⁷ That these parties would seek to resolve the problems implementing the *Second Order* without even considering the “third side” – SBRs – not only shows the underhandedness and arrogance of the parties, it reveals how committed they are to uniting against small, independent SBRs and chasing them out of the coinless calling market.

There are several aspects to the proposed rule modifications designed to make per-call tracking, reporting and compensation more difficult and costly for SBRs than for facilities-based carriers. Under the proposed modifications, there will be a “reduced reporting requirement[] ... to calls that can be tracked to completion within a single carrier’s network.”⁷⁸ The basis for this reduced requirement, states APCC is, “Where a facilities-based carrier handles all call-tracking responsibilities, the problems of collection are not as overwhelming as when those responsibilities are shared with resellers.” However, as demonstrated by APCC’s own comments, APCC’s difficulty in receiving adequate compensation from SBRs was not as a result of collecting information from SBRs, but rather, facilities-based carriers refusal to give any, or accurate information on their SBR customers.⁷⁹ The Commission should not punish SBRs for the past abuses of facilities-based carriers.

⁷⁶ *Id.*

⁷⁷ *Id.* at p. 7.

⁷⁸ *Id.*

⁷⁹ *Id.* at pp. 4-5.

Second, the proposed rule modification would “allow facilities-based carriers flexibility by giving them the choice of approaches to compensation of calls that they route to switch-based reseller customers[,]”⁸⁰ *i.e.*, permit facilities-based carriers to treat all calls sent to the SBRs’ switch as compensable. This “option,” is impermissible for the reasons set forth in IDT’s Initial Comments⁸¹ - most notably that it violates 47 USC §§ 201(b), 202(a) and 276. Moreover, the Commission must realize that this “option” will become the *de facto* means upon which all facilities-based resellers charge their SBR customers, as the facilities-based carriers have clearly stated in this proceeding and in their contacts with SBRs that this is their intention. Therefore, to accept this modification is to effectively redefine a completed call as one that is “answered by the called party,” to “all calls sent to a SBRs’ switch.”

Third, the proposed rule modification would allow the facilities-based carrier to “follow the approach contemplated in the *Second Order on Reconsideration*, and establish a call tracking arrangement with the reseller”⁸² although it would require “more detailed data reporting requirements than when the tracking takes place entirely within the IXC’s network.”⁸³ This proposal insults the intelligence of SBRs as well as the Commission and should be emphatically rejected. Most importantly, this approach will never be implemented because no facilities-based carrier would enter into an agreement with a SBR that increases the carrier’s tracking and reporting responsibilities as well as its liability for payment when the option of simply avoiding the tracking responsibilities altogether by forcing SBRs to remit compensation for all calls sent to their switch, as

⁸⁰ *Id.* at p. 8.

⁸¹ IDT Initial Comments at pp. 23-40.

⁸² APCC Comments at p. 9.

⁸³ *Id.*

permitted above. Similarly, as noted in our Initial Comments,⁸⁴ no PSP would agree to this option and forego the per-call compensation windfall that will result from payments for calls not answered by the called party. The Commission should not only reject this proposal, it should be insulted that it was even proposed.

F. PSPs' Past Problems Receiving Compensation Were the Fault of Facilities-based Carriers, Not SBRs.

The Commission's modified rules effectively eliminate SBRs' ability to directly track and compensate PSPs for their completed calls. This decision seems based on the unsubstantiated claim that "resellers as a group have shown they cannot be relied upon to track payphone calls."⁸⁵ However, the evidence presented by the PSPs simply does not support such a conclusion. Instead, the evidence suggests that any past difficulty faced by PSPs securing per-call compensation rests squarely on the facilities-based carriers. For example, in its Comments, APCC states, "IXCs generally have provided no information to PSPs about calls to resellers."⁸⁶ Additionally, APCC states:

APCC Services has had a long-running dispute with several IXCs over obtaining sufficient information to enable PSPs to identify calls handled by switch-based resellers. *** After finally receiving from certain IXCs lists of their alleged switch-based reseller customers, APCC found that many companies on those lists were not switch-based resellers at all. Those resellers claimed that the IXC should have been paying compensation for those calls. In other cases, APCC found that the switch-based reseller had paid payphone surcharges to the IXC and the IXC failed to remit the payments to the PSPs. Also, the lists obtained from the IXCs named hundreds of alleged switch-based resellers but without the volume of calls passed on to each reseller each quarter by the IXC....⁸⁷

⁸⁴ IDT Comments at pp. 28-29.

⁸⁵ APCC Comments at p. i.

⁸⁶ *Id.* at p. 4.

⁸⁷ *Id.* at pp. 4-5, n. 5.

Similarly, the RBOC Payphone Coalition states:

The sorry fact is that most IXC's have refused to cooperate with PSPs' efforts to obtain adequate data to confirm compensation obligations; in addition, some IXC's – including Worldcom and Global Crossing – have failed to pay the compensation they owed until found liable for violation of the Commission's rules.⁸⁸

Based on these PSPs own admissions, it is unclear how any PSPs can blame SBRs for any past difficulty obtaining per-call compensation. Moreover, it is cause for great concern that facilities-based carriers may now employ equally abusive practices against their SBR customers. For example, facilities-based carriers may claim to have remitted to PSPs a certain amount based on a number of calls, but may overstate this amount to secure additional compensation from SBRs. Clearly, SBRs need to be protected from facilities-based carriers. This can be most easily accomplished by granting the option to SBRs to track and report completed calls and remit per-call compensation directly to PSPs or through a third-party clearinghouse.

G. The Commission Should Reexamine Its Rules for SBR Reimbursement of Facilities-based Carrier Tracking and Reporting Costs.

IDT agrees with Flying J that it makes “no sense”⁸⁹ for SBRs to pay for the tracking costs of facilities-based carriers, particularly when “an underlying carrier's responsibility has always been to track calls to resellers ...”⁹⁰ and we support the alternatives proposed in Flying J's Comments. Moreover, if the Commission permits and/or requires SBRs to track and report their own completed calls, facilities-based carriers will incur little to no expense complying with the *Second Order*, making the issue of apportioning costs moot.

⁸⁸ RBOC Payphone Coalition Comments at p. 11.

⁸⁹ Flying J Comments at p. 14.

H. SBRs Should Not Be Required to Reimburse Facilities-based Carriers for Compensation Paid to PSPs for Non-completed Calls or the Cost of Tracking Non-completed Calls.

IDT supports the request by Flying J that the Commission clarify the *Second Order* to “expressly limit the IXCs’ right to reimbursement from SBRs to payments for compensable, completed calls and not permit reimbursement for non-completed calls”⁹¹ or for the cost of tracking non-completed calls. IDT agrees that absent such a clarification:

IXCs would have a powerful incentive to pay PSPs for all calls routed to their SBRs, rather than to go to the trouble to actually track such calls to determine if they are compensable. That is, IXCs would pay PSPs for all calls to an SBR platform, because they would know gratuitous payment for non-completed calls could be recovered from the SBRs. Such a practice ... would be at the expense of SBRs who ... could not recover the cost and remain viable competitors.⁹²

Indeed, as the Commission is well-aware, facilities-based have already informed SBRs of their intention to charge per-call completion charges and tracking calls for calls that are not answered by the called party, making it clear that absent this clarification, the facilities-based carriers will simply defy the Commission’s rules for recovering tracking costs.

IDT also supports Flying J’s request that the Commission clarify that only completed calls that carry payphone-specific digits are eligible for reimbursement.⁹³ As noted by Flying J, “in the absence of such coding digits, SBRs cannot determine whether a call is made from a payphone.”⁹⁴ Such a clarification should be beyond dispute from

⁹⁰ Bulletins Comments at pp. 1-2.

⁹¹ Flying J Comments at p. 13.

⁹² *Id.* (Footnote omitted).

⁹³ *Id.* at p. 13.

⁹⁴ *Id.*

any party to this proceeding as it aims solely to accomplish the goals of this proceeding – securing and verifying compensation for coinless calls originating from payphones.

VI. THE COMMISSION SHOULD NOT ADOPT A PERCENT-COMPLETED FACTOR FOR PER-CALL PAYPHONE COMPENSATION

In its Comments, the IPCA proposes per-call compensation based upon a SBR-specific percent of completed calls. While IDT recognizes that this is a better alternative than the draconian measures proposed by AT&T and Worldcom and the less severe, but still inaccurate measure proposed by Global Crossing, we do not support this proposal as it is inconsistent with the Commission's interpretation of 47 USC § 276. Moreover, it would violate the notice and comment requirements of the Administrative Procedure Act to adopt this alternative without initiating a rulemaking. Most importantly, IDT does not support this request because it seeks to change the basis for per-call compensation solely to accommodate the modified tracking and reporting requirements. It is the position of IDT that if the tracking, reporting and compensation requirements cannot reasonably conform to their subject – completed calls – the Commission must change those requirements rather than the basis upon which they are made.

VII. THE COMMISSION SHOULD DELAY IMPLEMENTATION OF ITS RULES.

While the Commenters may disagree on many of the particular aspects of the Petitions and modified rules, there is strong support for the requests to delay the implementation of the Commission's modified rules.⁹⁵ The primary basis for the requests is that "reports regarding compensable calls cannot be delivered until tracking capabilities are developed."⁹⁶ Additionally, the modified rules "have caused underlying carriers – such as AT&T, WorldCom and Global Crossing – to expend substantial sums to modify their systems to accommodate the new rules. In these circumstances, the Commission should suspend the effective date of the new rules until it has acted on the petitions before it."⁹⁷ IDT agrees that it is unreasonable to impose tracking responsibilities when there so many questions about the ability of the responsible parties to meet their regulatory obligations remain. Some Commenters, such as the RBOC Payphone Coalition, do not support an extension of the deadline citing the "urgent need for resolution of the compensation shortfall that the Commission's former rules have fostered."⁹⁸ IDT asserts that for the many reasons set forth in the Petitions and the Comments provided in response, the modified rules do not present a more efficient per-call compensation regime. This, combined with the simple fact that the responsible carriers are incapable of implementing the system required compel the Commission to, at a minimum, delay the implementation of its revised rules.

⁹⁵ See, "Global Crossing Telecommunications, Inc. Comments on Petitions for Reconsideration, Clarification and/or Declaratory Ruling," October 9, 2001 ("Global Crossing Comments") at pp. 5-6; VarTec Comments at p. 5; Worldcom Comments at pp. 13-14.

⁹⁶ Worldcom Comments at p. 13.

⁹⁷ Global Crossing Comments at p. 5.

⁹⁸ RBOC Payphone Coalition Comments at p. 8.

CONCLUSION

For the reasons stated in its Initial Comments and herein, IDT urges the Commission to deny the Petitions filed by AT&T, Worldcom and Global Crossing in this proceeding and eliminate, stay, delay, revise or otherwise halt the implementation of its tracking, reporting and compensation modified rules.

Sincerely,

_____/s/
Carl Wolf Billek
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October 24, 2001

Statement of Verification

I have read the foregoing and, to the best of my knowledge, information and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct.

Executed on October 24, 2001

_____/s/_____
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